

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

FOR MR. CHIEF JUSTICE SHEPARD.

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1910.

No. 2185.

748

PERCY METZGER, APPELLANT,

vs.

EDWARD M. MARKHAM, WILLIAM C. WOODWARD, AND
MORRIS HACKER, BOARD FOR THE CONDEMNATION
OF INSANITARY BUILDINGS IN THE DISTRICT OF
COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED JUNE 28, 1910.

December 7-1910

Van Orsdel A.J.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1910.

No. 2185.

PERCY METZGER, APPELLANT,

vs.

WILLIAM KELLY, WILLIAM C. WOODWARD, AND SNOWDEN ASHFORD, BOARD FOR THE CONDEMNATION OF INSANITARY BUILDINGS IN THE DISTRICT OF COLUMBIA, APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

No. 2185.

PERCY METZGER, Appellant,
vs.
EDWARD M. MARKHAM et al.

a Supreme Court of the District of Columbia.

United States District Court. No. 802.

WILLIAM METZGER, Petitioner,
vs.

WM. KELLY, WILLIAM C. WOODWARD, SNOWDEN ASHFORD, Board
for Condemnation of Insanitary Buildings in the District of Co-
lumbia, Respondents.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of
Columbia, at the City of Washington, in said District, at the times
hereinafter mentioned, the following papers were filed and proceed-
ings had in the above-entitled cause, to wit:

1 *Petition, &c.*

Filed January 14, 1909.

In the Supreme Court of the District of Columbia, Holding a
District Court.

United States District Court. No. 802.

PERCY METZGER, Petitioner,
vs.

WM. KELLY, WILLIAM C. WOODWARD, SNOWDEN ASHFORD, Board
for the Condemnation of Insanitary Buildings in the District of
Columbia, Respondents.

To the Honorable Supreme Court of the District of Columbia, hold-
ing a District Court of the United States for said District:

The petition of Percy Metzger respectfully shows to the Court as
follows:

1—2185A

2 1. That petitioner is a citizen of the United States, a resident of the District of Columbia and presents this petition in his own right.

2. That Wm. Kelly, William C. Woodward and Snowden Ashford are citizens of the United States, residents of the District of Columbia, and constitute the board for the condemnation of insanitary buildings in the District of Columbia.

3. That petitioner is the owner of sub lots numbered 42, 43, and 44, in Square numbered 557 of this district improved by houses numbered and known as 165, 167, and 169 Pierce Street North West, Washington, D. C.

4. That heretofore, to wit, on the Eighteenth (18th) day of November A. D. 1908, said board for the condemnation of insanitary buildings, caused a notice to be served on the petitioner whereby and wherein said notice, an order was made and signed by a majority of said board, condemning the premises hereinbefore mentioned, and further ordering that "unless said buildings be changed or repaired," "said buildings should be demolished and removed," a copy of said order being hereto attached and marked Exhibit "A," and made a part of this petition.

5. Petitioner states that by reason of the building regulations existing and in force in this District at the present time, petitioner is unable to resist the carrying out of the order of Condemnation herein shown, or to make the repairs necessary to avoid the order passed by said board.

6. Petitioner says that the carrying out of the order as herein recited, has already brought considerable loss to the petitioner by reason of the cutting off of rentals received by petitioner, and that the demolition and removal of said buildings will bring to petitioner a large loss of revenue from said houses as they now stand, to wit; the yearly sum of five hundred and one dollars and sixty cents, (\$501.60) the sum petitioner has regularly received from said houses and premises for a number of years past, and until this order was issued.

7. Petitioner says that under the law creating the board as aforesaid and described and known as an Act to create a board for the condemnation of insanitary buildings in the District of Columbia and for other purposes, approved May first 1906 under section numbered fourteen this Court may appoint a board of award to receive and hear evidence respecting the loss or damage which may arise by reason of the condemnation to owners' property, in order that owners of such condemned property may have the benefit of such damages as said board of award (when appointed) may find has resulted from such condemnation, petitioner therefore prays this Honorable Court to name and appoint such board or committee of award, and your petitioner prays as follows:

Prayers.

1. That the subpoena of this Honorable Court may issue to said board for the condemnation of insanitary buildings in the District of

Columbia requiring the said board to answer the exigencies of this petition.

3 2. That the Committee of Award provided for under section fourteen (14) of the act creating said board, be named and appointed and instructed as to their duties, by this Honorable Court.

3. For such other and further relief as the exigencies of the case require and this Court has power to grant.

PERCY METZGER, *Petitioner*.

The Respondents to this petition are William Kelly, Dr. William C. Woodward and Snowden Ashford, the board for the condemnation of insanitary buildings.

Verification.

I do solemnly swear that I have read the petition by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief, I believe to be true.

PERCY METZGER, *Petitioner*.

Subscribed and sworn to before me this 14th day of January, A. D. 1909.

J. R. YOUNG, *Cl'k*,
By F. E. CUNNINGHAM, *Ass't Cl'k*.

EXHIBIT "A."

Office of the Board for the Condemnation of Insanitary Buildings,
District of Columbia.

File No. 624.

IN THE MATTER OF THE CONDEMNATION OF PREMISES SITUATED
on Lots 42, 43, 44, Square 557, and Known as Nos. 165, 167,
169 Pierce St. N. W.

Order of Condemnation.

WASHINGTON, D. C., Oct. 31st, 1908.

Percy Metzger, Esq., 472 La. Ave. N. W.

SIR: The premises described above having been found, as the result of an investigation by the Board for the Condemnation of Insanitary Buildings, to be in such insanitary condition as to endanger the health or the lives of the occupants thereof, or of persons living in the vicinity; and the owners of said buildings having been notified in the manner prescribed by law to show cause why such buildings should not be condemned, and no cause having been shown, within the time allowed by law and prescribed in said notice, sufficient in the opinion of a majority of the members of said board to prevent condemnation of said building:

4 It is hereby ordered, This 29th day of October, 1908, that said building be, and it is hereby, condemned.

And it is further ordered that unless said building be so changed or repaired as to remedy the conditions which led to the condemnation thereof, the owner of said building demolish and remove the same within 60 days after the service of this notice.

W. KELLY,
Ass't to Engineer Commissioner, D. C.,
 S. ASHFORD,
Inspector of Buildings,
Board for the Condemnation of Insanitary Buildings.

NOTE.—It is unlawful for any person to occupy a condemned building after thirty days, exclusive of Sundays and legal holidays, after a copy of the order of condemnation has been affixed to said building.

It is unlawful for any person having authority to prevent to permit any such building to be occupied, except as specially authorized by the Board for the Condemnation of Insanitary Buildings, after thirty days, exclusive of Sundays and legal holidays, from and after the date of the service of a copy of the order of condemnation on the owner of such building; or, if there be several part owners of such building, from the latest date of service on any part owner; or, if a copy or copies of such order of condemnation has been affixed to the condemned building at a date subsequent to the date of service of the notice on any owner or the latest date of service on any part owner, after thirty days from the date on which said copy or copies of such order of condemnation was so affixed.

Notice served on Mr. Metzger this 18 day of Nov., 1908.

ROY E. HAYNES, *Inspector.*

Demurrer.

Filed February 11, 1909.

In the Supreme Court of the District of Columbia, Holding a
 District Court.

No. 802. District Court.

PERCY METZGER, Petitioner,

vs.

WILLIAM KELLY et al., Board of Condemnation of Insanitary
 Buildings, Respondents.

Now come the respondents and say that the petition filed in the above entitled cause is bad in substance.

E. H. THOMAS,
 W. H. W.,
Corporation Counsel, Attorney for Respondents.

5 NOTE.—Among the matters assigned as cause for demurrer are:

1. The petition does not allege facts sufficient to give the court jurisdiction.

2. The petition does not show with sufficient certainty what relief is desired nor does it ask for any relief grantable under the law.

3. The allegations of the petition are vague, indefinite and insufficient.

4. The petition is insufficient as matter of law.

Memorandum.

February 26, 1909.—Demurrer withdrawn by leave of Court.

Amended Petition.

Filed March 10, 1909.

In the Supreme Court of the District of Columbia, Holding a District Court.

United States District Court. No. 802.

PERCY METZGER, Petitioner,

vs.

WILLIAM KELLY, WILLIAM C. WOODWARD, SNOWDEN ASHFORD,
Board for the Condemnation of Insanitary Buildings in the District of Columbia, Respondents.

To the Honorable Supreme Court of the District of Columbia, holding a District Court of the United States for said District:

The Amended Petition of Percy Metzger, by leave of the Court to so amend having been first had and obtained, respectfully shows to the Court as follows:

1. That petitioner is a citizen of the United States, a resident of the District of Columbia, and presents this amended petition in his own right.

2. That William Kelly, William C. Woodward and Snowden Ashford are citizens of the United States, residents of the District of Columbia, and constitute the Board for the Condemnation of Insanitary Buildings in the District of Columbia.

3. That petitioner is the owner of sub lots numbered 42, 43, and 44, in square numbered 557 of this District, improved by houses numbered and known as 165, 167 and 169 Pierce street, North West, Washington, D. C.

4. That heretofore to wit: on the eighteenth (18th) day of November A. D. 1908, said Board for the Condemnation of Insanitary Buildings, caused a notice to be served on the petitioner, whereby and wherein said notice, an order was made and signed by a majority of said Board, condemning the premises hereinbefore mentioned,

and further ordering, that "Unless said buildings be changed or repaired," "said buildings should be demolished and removed." A copy of said order being attached to the original petition filed herein, and marked "Exhibit A" which said copy is hereby referred to and made a part of this petition.

5. Petitioner states that by reason of the building regulations existing and in force in this District at the present time, petitioner is unable to resist the carrying out of the order of Condemnation herein shown, or to make the repairs necessary to avoid the order passed by said Board.

6. Petitioner says that the carrying out of the order as herein recited, has already brought considerable loss to the petitioner by reason of the cutting off of rentals received by petitioner. And that the demolition and removal of said buildings will bring to petitioner a large loss of revenue from said houses, as they now stand, to wit: the yearly sum of four hundred and eighty-nine dollars and sixty cents (\$489.60), the sum petitioner has regularly received from said houses and premises for a number of years past, and until this order was issued. And petitioner asks damages incurred by loss of rentals from his houses, in the sum of fourteen hundred and sixty-eight dollars and eighty cents (\$1468.80).

7. Petitioner says, that said houses can be placed in a good state of repair for the sum of four hundred and fifty dollars (\$450.) and that when so repaired their value would be the sum of one thousand and five hundred dollars (\$1500.). Petitioner therefore says that the demolition of said houses will cause him a further loss in the sum of one thousand and fifty dollars (\$1050.), this being the value of said houses if so repaired, less the sum required to place them in a good state of repair.

8. Petitioner says that under the law creating the Board as aforesaid, and described and known as an Act to Create a Board for the Condemnation of Insanitary Buildings in the District of Columbia and for other purposes, approved May 1, 1906, under section numbered fourteen, this Court may appoint a Board of Award to receive and hear evidence respecting the loss or damage which may arise by reason of the condemnation to owners' property, in order that owners of such condemned property may have the benefit of such damages as said Committee of Award (when appointed) may find has resulted from such condemnation proceedings.

9. Petitioner therefore claims damages in the sum of twenty-five hundred and eighteen dollars and eighty cents (\$2518.80), the loss incurred by him, by reason of the Condemnation proceedings herein.

Premises considered petitioner prays as follows:

Prayers.

First. That the subpoena of this Honorable Court may issue to said Board for the Condemnation of Insanitary Buildings in the District of Columbia, requiring said Board to answer the exigencies of this petition.

Second. That the Committee of Award provided for under sec-

tion fourteen of the Act creating said Board be named and appointed and instructed as to their duties by this Honorable Court.

7 *Third.* That petitioner may have judgment of this Court against the defendants hereto in the sum of two thousand, five hundred and eighteen dollars and eighty cents (\$2518.80), the total sum claimed by reason of the loss of rentals from houses, together with the loss of his houses.

Fourth. For such other and further relief as the exigencies of the case require and this Court may have power to grant.

PERCY METZGER, *Petitioner.*

The respondents to this petition are: William Kelly, Dr. William C. Woodward, Snowden Ashford, the Board for the Condemnation of Insanitary Buildings.

Verification.

I do solemnly swear that I have read the petition by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true and those stated upon information and belief, I believe to be true.

PERCY METZGER, *Petitioner.*

Subscribed and sworn to before me this 10th day of M'ch A. D. 1909.

J. R. YOUNG, *Clerk,*
By F. E. CUNNINGHAM,
Assistant Clerk.

Demurrer to Amended Petition.

Filed March 25, 1909.

In the Supreme Court of the District of Columbia, Holding a District Court.

No. 802. District Court.

PERCY METZGER, *Petitioner,*

vs.

WILLIAM KELLY et al., Board of Condemnation of Insanitary Buildings, *Defendants.*

Now come the respondents and say that the amended petition filed in the above entitled cause is bad in substance.

E. H. THOMAS,
W. H. W.,
Attorney for Respondents.

NOTE.—Among the matters assigned as cause for demurrer are:

1. The amended petition does not allege facts sufficient to give the court jurisdiction.

8 2. The amended petition does not show with sufficient certainty what relief is desired, nor does it ask for any relief grantable under the law.

3. The allegations of the amended petition are vague, indefinite and insufficient.

4. The amended petition is insufficient as matter of law.

Memorandum.

April 16, 1909.—Demurrer to amended petition sustained.

Order Extending Time for Filing Second Amended Petition.

Filed April 28, 1909.

In the Supreme Court of the District of Columbia, Holding a District Court.

District Court. No. 802.

METZGER

vs.

KELLY et al.

Upon consideration of the motion of the plaintiff herein it is this 28th day of April, 1909, ordered that the time for filing the second amended petition be and the same hereby is extended for the period of ten days from this date.

THOS. H. ANDERSON, *Justice.*

Second Amended Petition.

Filed May 10, 1909.

In the Supreme Court of the District of Columbia, Holding a District Court.

United States District Court. No. 802.

PERCY METZGER, Petitioner,

vs.

WILLIAM KELLY, WILLIAM C. WOODWARD, SNOWDEN ASHFFORD, Board for the Condemnation of Insanitary Buildings in the District of Columbia, Respondents.

To the Honorable Supreme Court of the District of Columbia, holding a District Court of the United States for said District:

The Second Amended Petition of Percy Metzger, leave of the Court to so amend first having been had and obtained, respectfully shows to the Court as follows:

9 1. That the Petitioner is a citizen of the United States, a resident of the District of Columbia, and presents this Second Amended Petition in his own right.

2. That William Kelly, William C. Woodward and Snowden Ashford are citizens of the United States, residents of the District of Columbia, and constitute the Board for the Condemnation of Insanitary Buildings in the District of Columbia.

3. That the petitioner is the owner of sub lots numbered 42, 43, and 44, in square numbered 557 of this District, improved by houses numbered and known as 165, 167 and 169 Pierce street, Northwest, Washington, D. C.

4. That heretofore to wit: on the eighteenth (18th) day of November A. D. 1908, said Board for the Condemnation of Insanitary Buildings, caused a notice to be served on the petitioner whereby and wherein said notice, an order was made and signed by a majority of said Board, condemning the premises hereinbefore mentioned, because of their insanitary condition, and further ordering, that "Unless said buildings be changed or repaired," "said buildings should be demolished and removed." A copy of said order being attached to the original Petition filed herein, and marked "Exhibit A" which said copy is hereby referred to and made a part of this petition.

5. Petitioner states that by reason of the building regulations existing and in force in this District at the present time, petitioner is unable to resist the carrying out of the order of Condemnation herein shown, or to make the repairs necessary to avoid the order passed by said Board, although petitioner states that at the time of the passage of said order of the Board for the Condemnation of Insanitary Buildings, his said buildings were in a reasonably good state of repair and were not in an insanitary condition. Petitioner further states that the said order of the Board requiring his said buildings to be demolished and removed is arbitrary, unjust and not warranted by the condition of said buildings, and that unless this said order is subjected to the review and determination of a court of competent jurisdiction, petitioner will have been thereby deprived of his property without due process of law.

6. Petitioner says that under the law creating the Board as aforesaid, and described and known as an Act to Create a Board for the Condemnation of Insanitary Buildings in the District of Columbia and for other purpose, approved May 1, 1909, this court is vested with jurisdiction to modify or vacate any order for the demolition of a building made by said Board as aforesaid.

7. Petitioner further states that in all such cases where this court shall refuse to modify or vacate such orders of the said Board, it is further vested with jurisdiction to appoint a committee of Award to receive and hear evidence respecting the loss and damage which may accrue to the owner of property by reason of the destruction of his property by an order of said Board.

8. Petitioner says that the carrying out of the order as herein recited, has already brought considerable loss to the petitioner by rea-

son of the cutting off of rentals received by petitioner. And that the demolition and removal of said buildings will bring to the petitioner a large loss of revenue from said houses, as they now stand, to wit: the yearly sum of four hundred and eighty-nine dollars and sixty cents (\$489.60) the sum petitioner has regularly received from said houses and premises for a number of years past, and until this order was issued, and posted on his houses by said Board. Petitioner therefore says that if the said order of the said Board be carried into effect and his said property demolished, he will suffer damage by reason of loss of their rental in the sum of \$1468.80.

9. Petitioner says, that said houses can be placed in a good state of repair for the sum of four hundred and fifty dollars (\$450.00) and that when so repaired their value would be the sum of one thousand and five hundred dollars (\$1500.00). Petitioner therefore says that the demolition of said houses will cause him a further loss in the sum of one thousand and fifty dollars (\$1050.00), this being the value of said houses if so repaired, less the sum required to place them in a good state of repair.

Premises considered petitioner prays as follows:

Prayers.

First. That the subpœna of this Honorable Court may issue to said Board for the Condemnation of Insanitary Buildings in the District of Columbia, requiring said Board to answer the exigencies of this petition.

Second. That the Court will vacate and set aside the order of the said Board for the Demolition of Insanitary Buildings hereinbefore set forth; or will so modify said order as to protect the property of petitioner and preserve his rights and interests therein.

Third. That should the Court decline to vacate or modify said order, that the Court will then appoint a Committee of Award to determine the damages accruing to petitioner by reason of the demolition of his said buildings under the order of said Board; and that the Court will render judgment in his favor for the amount of damages assessed in his favor by such Committee of Award.

Fourth. For such other and further relief as the exigencies of the case require and this Court may have power to grant.

PERCY METZGER, *Petitioner.*

VICTOR H. WALLACE, *Att'y.*

The respondents to this petition are: William Kelly, Dr. William C. Woodward, Snowden Ashford, the Board for the Condemnation of Insanitary Buildings.

Verification.

I do solemnly swear that I have read the petition by me subscribed and know the contents thereof, and that the facts therein stated upon

my personal knowledge are true and those stated upon information and belief, I believe to be true.

PERCY METZGER, *Petitioner.*

11 Subscribed and sworn to before me this 10th day of May
A. D. 1909.

J. R. YOUNG, *Clerk,*
By F. E. CUNNINGHAM,
Assistant Clerk.

Demurrer to Second Amended Petition.

Filed June 3, 1909.

In the Supreme Court of the District of Columbia, Holding a
District Court.

District Court. No. 802.

PERCY METZGER

vs.

WILLIAM KELLY et al., Board for the Condemnation of Insanitary
Buildings in the District of Columbia.

Now come the respondents and say that the amended petition, filed herein, is bad in substance, because—

1. *This* "second amended petition" is the first "proceeding" instituted by petitioner "for the modification or vacation of the order of condemnation" and was not instituted or filed "within the time specified in the order of condemnation," namely, sixty days from November 18, 1908.

2. Paragraphs eight and nine of the second amended petition are substantially the same as paragraphs six and seven of the amended petition, a demurrer to which amended petition the court heretofore sustained.

3. The second amended petition does not allege facts sufficient to give the Court jurisdiction.

4. The second amended petition does not show with sufficient certainty what relief is desired nor does it ask for any relief grantable under the law.

5. The allegations of the second amended petition are vague, indefinite and insufficient.

6. The second amended petition is insufficient as matter of law.

E. H. THOMAS,
W. H. W.,

Corporation Counsel, Attorney for Respondents.

Mr. Percy Metzger:

Please take notice that the foregoing demurrer has been duly calendared for hearing and will be called up before the Justice hear-

ing District Court Cases on Friday June 11th, 1909, at 10 o'clock A. M. or as soon thereafter as counsel can be heard.

E. H. THOMAS,
G.,
Att'y for Respondents.

12 *Order Sustaining Demurrer to Second Amended Petition.*

Filed August 27, 1909.

In the Supreme Court of the District of Columbia, Holding a
District Court.

District Court. No. 802.

PERCY METZGER
vs.
WILLIAM KELLY et al.

This cause coming on to be heard on demurrer to the second amended petition filed herein, and after argument by counsel and being considered by the court, it is, by the court, this 27th day of August, A. D. 1909, adjudged, ordered and decreed that the said demurrer be and the same is hereby sustained.

By the Court,

THOS. H. ANDERSON, *Justice.*

From the foregoing decree, the Complainant, in open Court, notes an appeal to the Court of Appeals of the District of Columbia, and the bond for costs is hereby fixed in the sum of one hundred \$100.00 dollars.

THOS. H. ANDERSON, *Justice.*

Memorandum.

September 1, 1909.—Appeal bond approved and filed.

Mandate.

Filed March 19, 1910.

UNITED STATES OF AMERICA, ss:

[SEAL.]

The President of the United States of America to the Honorable the Justices of the Supreme Court of the District of Columbia, Greeting:

Whereas, lately in the Supreme Court of the District of Columbia, before you, or some of you, in a cause between Percy Metzger, peti-

tioner, and Wm. Kelly, William C. Woodward, Snowden Ashford, Board for the Condemnation of Insanitary Buildings in the District of Columbia, respondents, District Court Docket No. 802, wherein the order of the said Supreme Court entered in said cause on the 27th day of August, A. D. 1909, is in the following words, viz:

"This cause coming on to be heard on demurrer to the second amended petition filed herein, and after argument by counsel and being considered by the court, this 27th day of August, A. D. 1909, adjudged, ordered and decreed that the said demurrer be and the same is hereby sustained.

By the Court,

THOS. H. ANDERSON, *Justice.*"

as by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Court of Appeals of the District of Columbia by virtue of an appeal, agreeably to the Act of Congress in such case made and provided, fully and at large appears.

14 And whereas, in the present term of January, in the year of our Lord one thousand nine hundred and ten, the said cause came on to be heard before the said Court of Appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, It is now here ordered and adjudged by this Court that this appeal be, and the same is hereby, dismissed with costs; and that the said respondents recover against the said petitioner, Percy Metzger, for their costs herein expended and have execution therefor.

March 1, 1910.

You, therefore, are hereby commanded that such execution and proceedings be had in said cause, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the Honorable Seth Shepard, Chief Justice of said Court of Appeals, the 19th day of March, in the year of our Lord one thousand nine hundred and ten.

Costs of respondents:

Clerk—

Attorney Paid.

Printing Record.

HENRY W. HODGES,

Clerk of the Court of Appeals of the District of Columbia.

15

Order Dismissing Petitions.

Filed April 29, 1910.

Upon consideration of the motion of defendants filed herein on April 25, 1910, it is by the court this 29th day of April, A. D. 1910, adjudged, ordered and decreed that each of the petitions filed herein

be and the same are finally dismissed and that the defendants have judgment for costs.

WENDELL P. STAFFORD, *Justice*.

From the above decree, petitioner, in open court and in the presence of counsel for all parties, notes an appeal to the Court of Appeals of the District of Columbia which appeal is hereby allowed upon petitioner giving bond for costs in the sum of fifty dollars. Dated April 29, 1910.

WENDELL P. STAFFORD, *Justice*.

Memorandum.

May 16, 1910.—Appeal bond,—filed.

16 *Directions to Clerk for Preparation of Transcript of Record.*

Filed June 17, 1910.

The Clerk of the Court will please have a transcript of the record in this case prepared for appeal to the Court of Appeals of the District of Columbia, as follows:

Printed record of former appeal.

1910. M'ch 19. Mandate of Court of Appeals.

April 29. Order dismissing petition, and allowing appeal.

May 16. Appeal bond and approval.

This designation.

A portion of the above record having already been printed as the record on a former appeal of this case to the Court of Appeals of this District, it is hereby stipulated and agreed, in order to save expense, that the Clerk of the Supreme Court of the District of Columbia may use said printed record in preparing a transcript of this record, and as a part thereof.

VICTOR H. WALLACE,

Attorney for Appellant.

WM. HENRY WHITE,

Attorney for Appellees.

17 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,

District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 16, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 802, District Court Docket, wherein Percy Metzger is Petitioner and Wm. Kelly et al. are Re-

spondents, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 27th day of June, 1910.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 2185. Percy Metzger, appellant, vs. Edward M. Markham et al. Court of Appeals, District of Columbia. Filed Jun- 28, 1910. Henry W. Hodges, clerk.

~~NOV 4 1910~~

Henry W. Hodges
Blair

IN THE

Court of Appeals, District of Columbia.

October
~~JANUARY TERM, 1910.~~

2185
No. 2079.

PERCY METZGER, APPELLANT,

vs.

WILLIAM KELLY, WILLIAM C. WOODWARD, AND
SNOWDEN ASHFORD, BOARD FOR THE CONDEMNATION
OF INSANITARY BUILDINGS IN THE DISTRICT OF
COLUMBIA.

BRIEF FOR APPELLEES.

EDWARD H. THOMAS,
WILLIAM HENRY WHITE,
Attorneys for Appellees.

IN THE
Court of Appeals, District of Columbia.

October
~~JANUARY TERM, 1910.~~

2185
No. ~~2079.~~

PERCY METZGER, APPELLANT,

vs.

WILLIAM KELLY, WILLIAM C. WOODWARD, AND
SNOWDEN ASHFORD, BOARD FOR THE CONDEMNATION
OF INSANITARY BUILDINGS IN THE DISTRICT OF
COLUMBIA.

BRIEF FOR APPELLEES.

The act of Congress approved May 1, 1906, creates the Board for the Condemnation of Insanitary Buildings in the District of Columbia, and directs that it shall consist of the assistant to the Engineer Commissioner in charge of buildings.

Section 3 of the act directs the board—

“to investigate * * * into the sanitary condition of any building or part of a building in said District. * * * If any building or part of a building

be found, as the result of such investigation, to be in such insanitary condition as to endanger the health or the lives of the occupants thereof or of persons living in the vicinity, said board shall cause a notice to be served on each owner or part owner of such building, requiring him to show cause within not less than twenty days, exclusive of Sundays and legal holidays, from the date of the service of said notice, why such building or part of building should not be condemned. And if, within the time specified in said notice no cause be shown, sufficient in the opinion of a majority of said board to prevent the condemnation of such building or part of building said board shall issue an order condemning such building or part of building, and shall cause a copy of such order to be served on each owner or part owner, thereof, and a copy or copies to be affixed to the building or part of building condemned."

In this case the investigation, finding, notice, and failure to show cause are all in the following order of condemnation:

"The premises described above having been found, as the result of an investigation by the Board for the Condemnation of Insanitary Buildings, to be in such insanitary condition as to endanger the health or the lives of the occupants thereof, or of persons living in the vicinity; and the owners of said building having been notified in the manner prescribed by law to show cause why such building should not be condemned, and no cause having been shown, within the time allowed by law and prescribed in said notice, sufficient in the opinion of a majority of the members of said board to prevent condemnation of said building: It is hereby ordered, this 29th day of October, 1908, that said building be, and it is hereby, condemned.

"And it is further ordered that unless said building be so changed or repaired as to remedy the conditions which led to the condemnation thereof, the

owner of said building demolish and remove the same within 60 days after the service of this notice."

This was served on appellant November 18, 1908 (Rec., 5). Appellant next says, "that by reason of the building regulations existing and in force in this District at the present time petitioner is unable to resist the carrying out of the order of condemnation herein shown or to make the repairs necessary to avoid the order passed by said board."

This condition is provided for by section 7 of the act, which is:

"That the owner or owners of any building or buildings condemned under the provisions of this act, which cannot be so changed or repaired as to remedy the condition which led to the condemnation thereof, shall demolish and remove such building or part of building within a time to be specified by said board in the order of condemnation. And if any owner or part owner shall fail or refuse to demolish and remove said building or part of building within the time so specified he shall be deemed guilty of a misdemeanor and liable to the penalties provided by section thirteen of this act, and such building or part of building shall be demolished and removed under the direction of the Board for the Condemnation of Insanitary Buildings in the District of Columbia, and the cost of such demolition and removal, less the amount, if any, received from the sale of the old material, but including the cost of making good such damage to adjoining premises as may have resulted from carelessness or willful recklessness in the demolition of such building and the cost of publication, if any, herein provided for, shall be assessed by the Commissioners of the District of Columbia as a tax against the premises on which such building or part of building was situated, such tax to be collected in the same manner as general taxes are collected, and when collected shall be deposited in the Treasury to the credit of the United States and the District of Columbia in equal parts."

The building regulations "have the same force and effect within the District of Columbia as if enacted by Congress."

Act of June 14, 1878.

United States *ex rel.* Strasburger *vs.* Commissioners,
5 Mackey, 393.

Under the original and first amended petition petitioner does not deny nor does he object to the findings that his buildings were "insanitary;" he admits they may not be repaired lawfully, and the act of 1906 requires that they "shall be demolished and removed."

The original petition asking nothing specific, it was abandoned and the first amended petition was substituted. Under it two demands are made: first, *three years' rent* in advance for said buildings, which may not be allowed because section 5 makes it unlawful to occupy the buildings, and no such relief is authorized by the act or by law; and, second, for the value of the buildings as repaired, less the cost of repair, when it is unlawful to repair. Appellant here tried to bring his case within paragraphs "second" and "(b)" of section 14, which read:

"Second. That the building is in a state of defective sanitation, or is not in reasonably good repair;—

"(b) Shall in the second case be the amount estimated as the value of the building if it had been put into a sanitary or safe condition, or into reasonably good repair, after deducting the estimated expense of putting it into such condition or repair:"

Admitting, however, as he does in his petition, that his buildings may not lawfully be repaired, his case fails under those paragraphs, and falls exactly within paragraphs "third" and "(c)," which are:

"Third. That the building is unfit and not reasonably capable of being made fit for human habita-

tion; and if the committee, or a majority of the members thereof is satisfied by such evidence that compensation should be awarded, then the compensation—

“(c) Shall in the third case be the value of the materials of the building.”

Under section 7 he is also chargeable with the cost of removal. The demurrer was properly sustained, as he did not ask for any relief to which he is entitled.

The second amended petition differs from the first in the following allegation only:

“At the time of the passage of this said order of the Board for the Condemnation of Insanitary Buildings, his said buildings were in a reasonably good state of repair and were not in an insanitary condition. Petitioner further states that the said order of the board requiring his said buildings to be demolished is arbitrary, unjust and not warranted by the condition of said buildings, and that unless this said order is subjected to the review and determination of a court of competent jurisdiction, petitioner will have been thereby deprived of his property without due process of law.”

Appellant thus made, for the first time, any objection to the order of the board in finding that his buildings are insanitary and in condemning them, and so asks, for the first time, for any grantable relief. Relief is authorized under section 14 of the act upon the reasonable condition, however:

“That the owner or owners of any building condemned under the provisions of this act may, within the time specified in the order of condemnation proceedings,” &c.

origin. 17, 1909

The “time specified in the order” expired, before the filing of the second amended petition, before any grantable relief

(60 days after the service of the notice on Nov. 18, 1908) and

either first or

was asked, and before any objection to the finding or condemnation was made.

Two possible constructions of section 14 are: First, that the court has jurisdiction only in "proceedings * * * for the modification or revocation of the order of condemnation," and the argument is that by the language of the act the "proceedings" are thus defined and limited; second, that "the court may appoint a committee of award, * * * who * * * shall proceed to hear and receive evidence respecting the amount of damages to the owner or owners of such condemned building" when there have been no proceedings instituted to modify or vacate the condemnation.

Under the first construction the court is without jurisdiction, as no such proceeding was instituted within the sixty days, and under the second there is the same want of jurisdiction, and the further objection that appellant is not entitled to any of the damages he asks.

The "committee of award" has no province except to fix damages within the limitations of the act, and may not pass upon the question of modification or vacation of the order of condemnation in any case. That is for the court. The court is without jurisdiction in this case, and the order finding the condition of the buildings and the order condemning them is final, and their status is fixed.

The court is without jurisdiction to appoint the committee of award for the same reason, and if appointed it could not make the award asked for. The demurrer to the second amended petition was also properly sustained.

For the convenience of the Court copies of
Respectfully submitted,

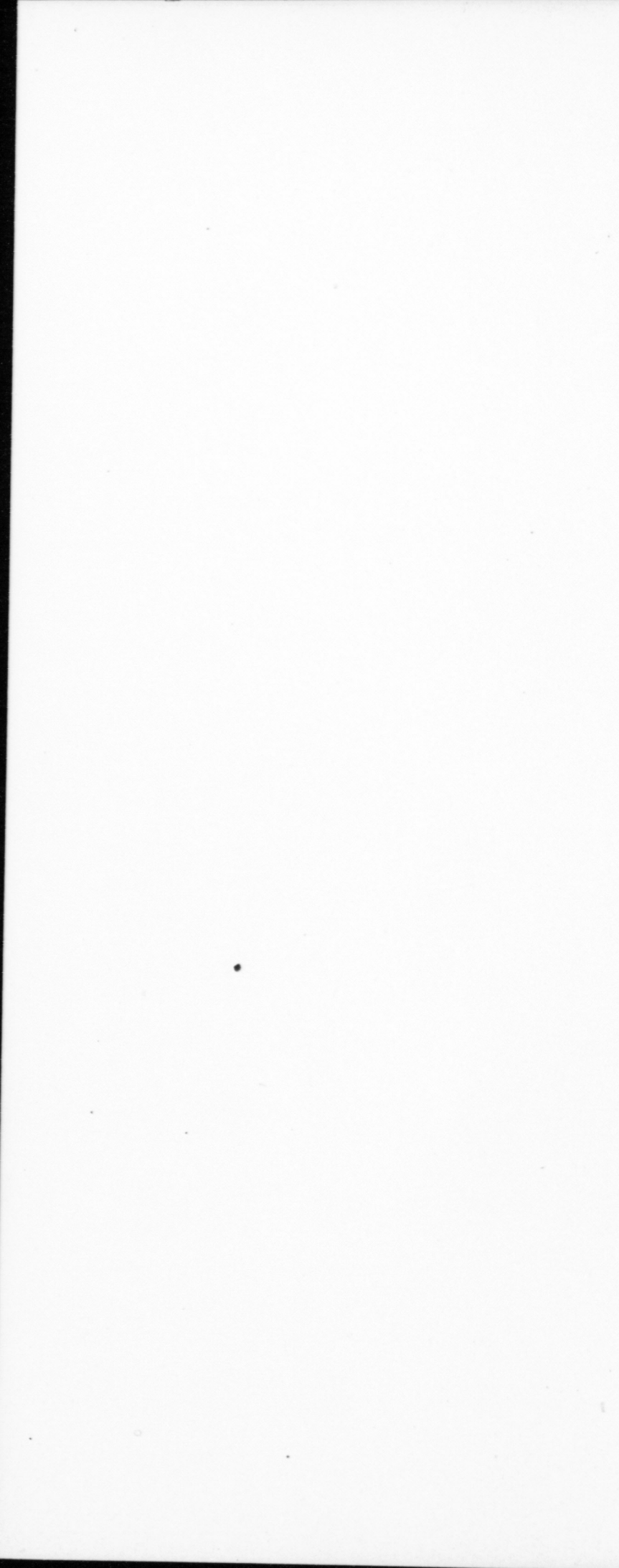
EDWARD H. THOMAS,
WILLIAM HENRY WHITE,
Attorneys for Appellees.

the Act of May 1, 1906, are filed herewith.

AN ACT
TO CREATE A BOARD FOR
THE CONDEMNATION
OF
INSANITARY BUILDINGS
IN THE
DISTRICT OF COLUMBIA,
AND FOR OTHER PURPOSES.

PLEASE PRESERVE THIS PAMPHLET
FOR FUTURE REFERENCE.

NORMAN T. ELLIOTT PRINTING COMPANY



Board--Organization and Duties of.

[PUBLIC—No. 138.]

An Act To create a board for the condemnation of insanitary buildings in the District of Columbia, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be, and is hereby, created in and for the District of Columbia a board to be known as the board for the condemnation of insanitary buildings in the District of Columbia, to consist of the assistant to the Engineer Commissioner in charge of buildings, the health officer, and the inspector of buildings of said District, and to have jurisdiction and authority to examine into the sanitary condition of all buildings in said District, to condemn those buildings which are in such insanitary condition as to endanger the health or lives of the occupants thereof or of persons living in the vicinity, and to cause all buildings to be put into sanitary condition or to be vacated, demolished, and removed, as may be required by the provisions of this Act. Said board may authorize and direct the performance of any of the ministerial duties of said board by officers, agents, employees, contractors, and employees of contractors duly detailed or employed by the Commissioners of said District for that purpose. Said board, the members thereof, and all persons acting under its authority, may,

between the hours of eight o'clock antemeridian and five o'clock postmeridian, peaceably enter into and upon any and all lands and buildings in said District for the purpose of inspecting the same. Said board shall report its operations to the Commissioners of the District of Columbia from time to time as said Commissioners direct. Said Commissioners shall furnish said board such assistance as may be required for the proper conduct of its work, by details from various departments and offices of the government of said District.

SEC. 2. That a majority of the board for the condemnation of insanitary buildings shall constitute a quorum, and a majority vote of the members present shall be necessary to condemn any building under this Act. Whenever for any reason the health officer is unable to act as a member of said board one of the deputy health officers shall act as a member thereof in place of said health officer, and whenever for any reason the inspector of buildings is unable to act as a member of said board the principal assistant inspector of buildings shall act as a member thereof in place of said inspector of buildings; but no person shall act as a member of said board who has any property interests, direct or indirect, in his own right or through relatives or kin, in the building the sanitary condition of which is under consideration. The deputy health officer and the principal assistant inspector of buildings, when acting as members of the board for the condemnation of insanitary buildings in the District of

Columbia, shall have all authority and duties which are vested by this Act in the health officer and the inspector of buildings, respectively, when acting in the same manner.

Preliminary Notice.

SEC. 3. That said board for the condemnation of insanitary buildings be, and is hereby, authorized to investigate, through personal inquiry and inspection by the members thereof, and through inquiry and inspection by officers, agents, and employees appointed or detailed for that purpose, into the sanitary condition of any building or part of a building in said District, except such as are under the exclusive jurisdiction of the United States. If any building or part of a building be found, as the result of such investigation, to be in such insanitary condition as to endanger the health or the lives of the occupants thereof or of persons living in the vicinity, said board shall cause a notice to be served on each owner or part owner of such building requiring him to show cause within not less than twenty days, exclusive of Sundays and legal holidays, from the date of the service of said notice why such building or part of building should not be condemned.

Condemnation.

And if within the time specified in said notice no cause be shown sufficient in the opinion of a majority of said board to prevent the condemnation of such building or part of building said board shall issue an order condemning such building or part of building, and shall cause a copy of

such order to be served on each owner or part owner thereof, and a copy or copies to be affixed to the building or part of building condemned.

Occupancy of Condemned Houses.

SEC. 4. That from and after thirty days, exclusive of Sundays and legal holidays, after a copy or copies of any order of condemnation has been affixed to any condemned building or part of building no person shall occupy such building or part of building.

SEC. 5. That no person having authority to prevent shall permit any building or part of building condemned to be occupied except as specially authorized by the board for the condemnation of insanitary buildings in the District of Columbia, under authority of section six of this Act, after thirty days, exclusive of Sundays and legal holidays, from and after the date of the service of a copy of the order of condemnation on the owner of such building ; or, if there be several part owners of such building, from the latest date of service on any part owner ; or, if a copy or copies of such order of condemnation has been affixed to the condemned building or part of building at a date subsequent to the date of service of the notice on any owner or the latest date of service on any part owner, after thirty days from the date on which said copy or copies of such order of condemnation was so affixed.

Correction of Insanitary Conditions.

SEC. 6. That if the owner or owners of any building or part of building condemned under the

provisions of this Act shall make such changes or repairs as will remedy in a manner satisfactory to said board the conditions which led to the condemnation of such building or part of building, said board shall cancel its order of condemnation and the building may be again occupied; and if such owner or owners can not make such changes or repairs within the period within which they may lawfully permit such building or part of building to be occupied under section five of this Act, but proceed with such changes or repairs with reasonable diligence during that period, said board may, by special order, extend from time to time the period within which the occupants of said building or part of building may remain therein and within which the owner or owners thereof may permit them so to do.

Demolition of Condemned Buildings.

SEC. 7. That the owner or owners of any building or buildings condemned under the provisions of this Act, which can not be so changed or repaired as to remedy the condition which led to the condemnation thereof, shall demolish and remove such building or part of building within a time to be specified by said board in the order of condemnation. And if any owner or part owner shall fail or refuse to demolish and remove said building or part of building within the time so specified he shall be deemed guilty of a misdemeanor and liable to the penalties provided by section thirteen of this Act, and such building or part of building shall be demolished and removed

under the direction of the board for the condemnation of insanitary buildings in the District of Columbia, and the cost of such demolition and removal, less the amount, if any, received from the sale of the old material, but including the cost of making good such damage to adjoining premises as may have resulted from carelessness or willful recklessness in the demolition of such building and the cost of publication, if any, herein provided for, shall be assessed by the Commissioners of the District of Columbia as a tax against the premises on which such building or part of building was situated, such tax to be collected in the same manner as general taxes are collected, and when collected shall be deposited in the Treasury to the credit of the United States and the District of Columbia in equal parts.

Notices. Service of.

SEC. 8. That whenever the title to any building or part of a building the condemnation of which is contemplated is in litigation, said board for the condemnation of insanitary buildings shall notify all parties to the suit and shall report the circumstances to the corporation counsel of the District of Columbia, who shall bring such circumstances to the attention of the court in which such litigation is pending for the purpose of securing such order or decree as will enable said board to continue such proceedings looking toward condemnation, and such court is hereby authorized to make such decrees and orders in such pending suit as may be necessary for that purpose.

SEC. 9. That whenever the title to any building or part of building is vested in a person non compos mentis, or a minor child or minor children without legal guardian, said board for the condemnation of insanitary buildings shall report that fact to the corporation counsel of the District of Columbia, who shall take due legal steps to secure the appointment of a guardian or guardians for such person non compos mentis, or minor child or children aforesaid, for the purpose of the condemnation proceedings authorized by this Act. And any justice of the supreme court of the District of Columbia holding the equity court is hereby authorized to appoint a guardian or guardians for that purpose.

SEC. 10. That any notice required by this Act to be served shall be deemed to have been served if delivered to the person to be notified, or if left at the usual residence or place of business of the person to be notified, with a person of suitable age and discretion then resident therein ; or if no such residence or place of business can be found in the District of Columbia by reasonable search, if left with any person of suitable age and discretion employed therein at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates ; or if no such office can be found in said District by reasonable search, if forwarded by registered mail to the last known address of the person to be notified and not returned by the post-office authorities ; or if no address be known or can by reason-

able diligence be ascertained, or if any notice forwarded as authorized by the preceding clause of this section be returned by the post-office authorities, if published on ten consecutive days in a daily newspaper published in the District of Columbia; or if by reason of an outstanding recorded transfer of title the name of the owner in fact can not be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore in this section provided. Any notice to a corporation shall, for the purposes of this Act, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right; and notice to a foreign corporation shall, for the purposes of this Act, be deemed to have been served if served on any agent of such corporation personally, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia.

Right of Inspection.

SEC. 11. That no person shall interfere with any member of the board for the condemnation of insanitary buildings or with any person acting under authority and by direction of said board in the discharge of his lawful duties, nor hinder, prevent, or refuse to permit any lawful inspection or the performance of any work authorized by

this Act to be done by or by authority and direction of said board.

Placards not to be Concealed, Obliterated or Removed.

SEC. 12. That no person shall, without the consent of said board for the condemnation of insanitary buildings, deface, obliterate, remove, or conceal any copy of any order of condemnation which has been affixed to any building or part of building by order of said board; and the owner and the person having custody of any building or part of building to which a copy or copies of any such order has been affixed shall, if said copy of said order has been to his knowledge defaced, obliterated, or removed, forthwith report that fact in writing to said board, unless he has good reason to believe that such copy of such an order has been removed by authority of said board, and if such copy of such order has been concealed shall forthwith expose the same to view.

Penalties.

SEC. 13. That any person violating or aiding or abetting in violating any of the provisions of this Act shall, upon conviction thereof in the police court of the District of Columbia, upon information filed in the name of said District, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than ninety days; and each day on which such unlawful act is done or during which such unlawful negligence continues shall constitute a separate and distinct offense.

Right of Appeal.

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SEC. 14. That the owner or owners of any building or part of building condemned under the provisions of this Act may, within the time specified in order of condemnation, institute proceedings in the supreme court of the District of Columbia, sitting as a district court, for the modification or vacation of the order of condemnation aforesaid, and the court shall give precedence to any such case and shall hear the testimony adduced therein ; and unless the court shall find that there is sufficient proof made of the necessity of the destruction of such building or part of building, the order of the board for the condemnation of insanitary buildings shall be modified or set aside, as said court shall direct ; otherwise the court shall issue such orders and decrees as may be necessary to carry the order of said board, as made by the board or as modified by the court, into effect ; and the court may appoint a committee of award, consisting of three persons, each of whom shall have the qualifications of jurors in the District of Columbia, who, after taking the oath required of jurors in the trial of civil causes, shall proceed to hear and receive evidence respecting the amount of damages to be awarded to the owner or owners of such condemned building or part of building aforesaid, and said committee may issue ✓ subpœnas requiring the attendance of witnesses before them and may administer oaths to such witnesses. Witnesses may be compelled to appear and testify before said committee in the same manner as witnesses may be compelled

to appear and testify in the supreme court of the District of Columbia; and, if need be, said committee shall be untitled, upon application, to the aid of said court to compel such attendance and giving of testimony. Unless the court shall order otherwise, the hearing of evidence before said committee need not be in the presence of the court, but they may meet in any room assigned to them by the United States marshal for the District of Columbia, who shall, in person or by deputy, attend such hearings. In such proceedings evidence shall be received by the committee of award appointed as aforesaid, to prove—

First. That the rental of the building was enhanced by reason of the same being used for illegal purposes, or being so overcrowded as to be dangerous or injurious to the health of the inmates; or

Second. That the building is in a state of defective sanitation, or is not in reasonably good repair; or

Third. That the building is unfit and not reasonably capable of being made fit for human habitation; and if the committee, or a majority of the members thereof, is satisfied by such evidence that compensation should be awarded, then the compensation—

(a) Shall in the first case, so far as it is based on rental, be on the rental, of the building (as distinct from the ground rent), which would have been obtainable if the building was occupied for legal purposes, and only by the number

of persons whom the building was, under all the circumstances of the case, fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates; and

(b) Shall in the second case be the amount estimated as the value of the building if it had been put into a sanitary or safe condition, or into reasonably good repair, after deducting the estimated expense of putting it into such condition or repair; and

(c) Shall in the third case be the value of the materials of the building.

That after hearing and considering the testimony offered by the owner and offered on behalf of the District of Columbia, the said committee of award shall report to the court in writing the compensation allowed by them to the owner according to the provisions of this section. Unless cause be shown to the court within ten days from the filing of said report why the same should not be confirmed, the court shall confirm the same and judgment be entered thereon accordingly; but from the damages awarded in any case the cost of removing the building, including the cost of making good such damage to adjoining premises as may have resulted from carelessness or willful recklessness in such removal, and the cost of publication, if any, authorized by section ten of this Act, shall be deducted unless the owner shall, at his own expense, remove the same within such time as may be fixed by the court in the order confirming the report of the said committee as hereinbefore provided.

That each member of the committee of award appointed by the court as aforesaid shall receive for each day's attendance the sum of five dollars, and any vacancy caused by death, sickness, or disqualification may be filled by appointment by the court.

SEC. 15. That except as herein otherwise authorized all expenses incident to the enforcement of this Act shall be paid from appropriations made from time to time for that purpose, one-half from the revenues of the District of Columbia and one-half from any money in the Treasury not otherwise appropriated.

SEC. 16. That all Acts and parts of Acts inconsistent with the provisions of this Act be, and the same are hereby, repealed.

Approved, May 1, 1906.